THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No. 15361 OF 2005

DATED: 07.12.2007

BETWEEN:

Gattineni Ramesh Babu and
others.

….Petitioners

And

Guntur Vigilance & Enforcement
Department, The Assistant Director of
Mines and Geology, Guntur and others.

….Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No. 15361 OF 2005

ORDER:

This Court issued rule nisi on 15.7.2005 and granted interim direction directing the respondents to release the vehicles in question on petitioners furnishing security to the extent of the value of the said vehicles as assessed by the Local Motor Vehicles' Inspector of the area concerned. The petitioners are also directed to produce the vehicles in question as and when required during the course of enquiry by the respondents and further directed not to dispose or alienate or create any third party interest over the said vehicles.

W.V.M.P.No.101 of 2006 was filed to vacate the interim order. It was recorded that the bank guarantee was furnished by the petitioners. But, it is already expired and therefore, the petitioners so as to comply with the condition imposed by the Court, have to execute fresh bank guarantee for a period of one year. If the bank guarantee is not executed/renewed within a period of one week from the date of receipt of a copy of the order, the impugned order passed by this Court dated 15.7.2005 shall stand vacated without reference to the Court. With the above observations, the WVMP and WPMP are disposed of.

The petitioners filed the present writ petition praying for a writ of mandamus to declare the seizure of the petitioners' vehicles by the

respondents as illegal and also to direct the respondents to release the vehicles in question and further to direct the respondents to pay the petitioners, the damages at the rate of Rs.2,000/-per day to the 1st petitioner and Rs.500/- each per day to petitioners 2,3,4 & 5 from 5.7.2005 till the date of delivery of the vehicles and further to declare the action of the respondents as contrary to law, arbitrary , illegal, irregular, unjustified, unconstitutional and unsustainable and pass such suitable orders.

Counter-affidavit is filed by respondents 1 to 6.

Sri E. Ayyapureddy, learned Counsel representing the writ petitioners had taken this Court through the relevant provisions of the Act governing the field and would explain that the central Government can declare by virtue of the notification the earth as a minor mineral and in the light of the same, the respondents have no power or authority to seize the vehicles in question. The learned counsel also would explain that panchanama shows only ordinary earth. But, if come to affidavit, a development was made and hence, the stand taken by the learned Counsel cannot be said to be a sustainable stand.

The learned Counsel also had drawn the attention of this Court through sections 3, 22 and 23 of the Mines and Mineral Development Act, 1967 as well and placed reliance on certain decisions. The learned Counsel would submit that it is pertinent to note that no further action had been initiated and even in this view of the matter, the bank guarantee furnished need not be continued and accordingly, the writ petition deserves to be allowed.

The learned Additional Government Pleader for Industries had taken this Court through the relevant portions of the counter-affidavit and would maintain that even ordinary earth being a minor mineral in

the light of Section 3 (e) and 15 of the Act, it cannot be said that the impugned action is without jurisdiction and hence, the writ petition is liable to be dismissed.

Heard the learned Counsel and perused the material available on record.

The relief prayed in the writ petition had already been specified above.

The petitioners had placed the mediators report before this Court, which would go to show that on enquiry, the village Secretary said that from one month, the ordinary soil earth (matti) is being transported and the names of the owners of the land had been referred to and the purpose for which the ordinary soil-earth-Matti was being transported also had been referred to. The 1st petitioner is the owner of the Proclainer No.L & T 20x4621611 NK 98012U. Petitioners 2 to 5 are the owners of the Tractors and Trallies having it registration Nos.AP27V/708—AP27Z/709, AP7W/4614--- AP7W/4615, AP27H/2511---- AP27H/4512, AP7V/1884---- AP7V/1885. It is stated that on 5.7.2005 at about 10.30 a.m., all the respondents seized the vehicles in question on the ground that they were transporting ordinary soil/earth (Matti) from the land in Sy.No.542/A of Chavitipalem village, Near Ganapavaram, Nadendla Mandal, Guntur District, owned by Kotari Ramarao and Kotari Koteswara Rao, for newly constructed Siva Swathi Textile Company in the Village. The proclainer and Tractor are not transporting any material at the time of seizure. The seizure of the proclainer and tractors by the respondents is illegal and without jurisdiction and the same is malafide.

In the counter-affidavit filed, it is stated that it is a fact that on 5.7.2005, officials of regional Vigilance and Enforcement Officer, Guntur along with Mandal Revenue Officer, Nadendla and staff of the

Assistant Director of Mines and Geology, Guntur have detected the illegal quarrying of gravel at S.No.542/A of Chavitipalem (V) near Ganapavaram, Nadendla Mandal of Guntur District and noticed that one Proclainer is excavating the gravel and four tractors are being loaded with gravel. The proclainer and four tractors loaded with gravel were handed over to the Mandal Revenue Officer, Nadendla. Several other factors relating to what had been specified in panchnama also had been narrated. The relevant portions of the panchanama already had been referred to above.

A specific stand had been taken that ordinary earth is also minor mineral and specified in Schedule I of Rule 10 of APMMC Rules, 1966 and hence, the Pattadar should obtain prior permission before quarrying for ordinary earth/gravel in any area from the concerned authorities in accordance with Rule 5 of APMMC Rules. Further G.O.Ms.No.446, Industries & Comm. (M.I) Dept., dated 24.8.2000 and Section 15(1) of M.M.(R & D) Act, 1957 also had been referred to.

The relevant sections and the rules governing the field also had been specified in the counter-affidavit. Strong reliance was placed on the decision of this Court reported in *M/s. Nagarjuna Constructions Co.Ltd., and others Vs. Govt. of A.P. & others*[1] wherein the learned Judge of this Court held that

> *"From the reading of Rule 10 of the Rules read with Schedule I, the State Government is competent to collect Seignorage fee on other filling material at Rs.10/- per cubic metre. However, the power to collect Seignorage fee at the rates mentioned in Schedule I read with Rule 10 is subject to filling material being declared as minor mineral under Section 3 (e) as the fact that earth is a 'filling material' cannot be disputed. As the State Government under Section 15 has the power to levy fee in respect of the minor mineral as declared by the central Government under Section 3 (e) by notification in the*

Official gazette, and since no proceeding is placed before the Court declaring Earth as a minor mineral by the Central Government by a notification published in the Official gazette and in the absence of a notification issued by the Central Government declaring Earth as minor mineral, the State Government is not competent to collect Seignorage fee under Rule 10 read with Schedule I."

It is pertinent to note that there is shifting of stand by respondents 1 to 6 in the counter-affidavit stating that gravel was being transported whereas the panchanama would go to show that only ordinary matti-soil-earth was being transported. Item 6 of Schedule I APMMC Rules specify Gravel, Murrum, Shingle any other filling material. The ordinary soil represents the rate of Seignorage fee at Rs.10/- per cubic metre. Thus, item No.6 clearly exempts ordinary soil and earth. As already referred to supra, the panchnama itself shows that ordinary soil alone was being transported. The ordinary earth in patta land is not mineral and it does not vest with the State Government. The Pattadar only is the owner of the ordinary earth and he has right to make use of it in whatever manner he likes. Ordinary earth is not a minor mineral under Section 3(e) of the Mines and Mineral Development Act as aforesaid.

As far as the claim on damages is concerned, no acceptable material had been placed before this Court and hence, this Court is not inclined to express any opinion relating to the said aspect. It is also brought to the notice of this Court that the respondents had not further proceeded with to take further action. This would also go to show that the respondents themselves are doubtful about the stand, which they are taking in the counter-affidavit.

In the light of the provisions of the Act and also the Rules which

had been relied upon by the respective counsel and respective stands taken in the affidavit and counter-affidavit and also in the light of decision of this Court cited supra, this Court is of the considered opinion that the seizure of the vehicles in question being illegal, the same is hereby declared as illegal and inasmuch as the vehicles had already been released by furnishing bank guarantee, the bank guarantee would come to an end since the impugned action of the seizure of the vehicles is being declared as illegal. As far as the relief of damages is concerned, since no acceptable material is placed before this Court, this court is not expressing any opinion, but however, negative the said relief.

Accordingly, the writ petition is hereby allowed to the extent indicated above. No order as to costs.

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Justice P.S. Narayana

Dated: 07.12.2007.
Nn.

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

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[1] 1999(3) An.W.r. 106